

**Notice of Allowability**

Application No.

09/647,918

Examiner

Leon Lankford

Applicant(s)

YANG, ZHENHUA

Art Unit

1651

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 12/7/2005.
2. ☒ The allowed claim(s) is/are 54-56 58-62 63-68 70-71 79-81 83-84.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |

### REASONS FOR ALLOWANCE

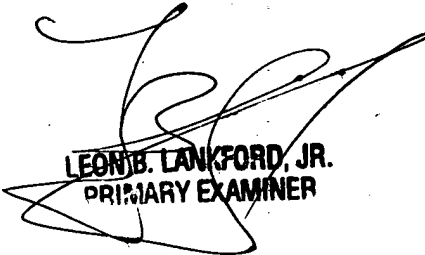
The following is an examiner's statement of reasons for allowance: The method of making the terminally methyl-branched fatty acids using *Strenotrophomonas* is not taught or suggested in the prior art. The prior art also does not suggest using *Strenotrophomonas* to make a fermentation solution including terminally methyl-branched fatty acids or that solution *per se*. Applicant uses unconventional product-by-process claim language in that the indefinite article "A" is used rather than the more proper definitive article "The" and uses the generic "product" instead of the more proper "fermentation solution." Despite this unconventional claim drafting, it is clear to the examiner that claims 66-68 & 70-71 are drawn to the ultimate fermentation solution which is a complex medium and not some "sub-product" of the fermentation solution, e.g. the fatty acid *per se*, as some might interpret because of the use of the claim language "A product." The claims have been examined with "A product of claim..." being defined as if it read "The fermentation solution of claim..." as that definition is the broadest reasonable interpretation of the claims consistent with the interpretation that those skilled in the art would reach. Clearly applicant is not intending to claim the fatty acids *per se* as evidenced by the fact that applicant did not draft a product-by-process claim for method claim 54 and because applicant clearly recognizes that the fatty acids *per se* are not novel.

Although the issues with claims 66-68 & 70-71 do not necessitate a claim rejection or objection, it is suggested that applicant amend the claims to adhere with

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conventional product-by-process practice. Further claims 79-81 & 83-84 may be better drafted to include a formulating step.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER